

ADKT 558

AUG 05 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURTBY  CHIEF DEPUTY CLERK

Your Honors,

My name is Shaneka Malloyd. I graduated from Boyd School of Law in 2019.¹ I am a Black, single mother of a beautiful eleven-year-old. I am currently employed full-time as a law clerk. As a law student, I completed two legal clinical programs, a law practicum program, and a clerkship at the Legal Aid Center of Southern Nevada. My first time sitting for any bar exam will be the July/August 2020 bar exam here in Nevada; it is my proverbial "first bite at the apple." As a person of color, my life has been disparately impacted by coronavirus during preparation for the Nevada bar exam. Additionally, I have had to manage the emotional distress of the killings of Breonna Taylor, George Floyd, and countless others during this difficult period of racial reckoning while still preparing for the bar exam. I experienced a mix of emotions during this time from fear, anger, and sorrow as well as general inability to concentrate during that time. Additionally, while preparing for the bar I had no choice but to continue to work full-time during this period to support myself and my daughter and to financially assist family that lost income due to coronavirus.

In April 2020, my daughter lost her grandmother due to complications resulting from coronavirus. In July 2020, my daughter's father was hospitalized after contracting coronavirus. After the loss experienced in April 2020, this obviously caused much distress in the lives of my daughter and me. Her father is recovering after several weeks of hospitalization. However, as her father began to recover, we discovered that her grandfather had contracted coronavirus; he passed away several days later on July 23, 2020 (the Thursday prior to the initialing scheduling of the bar exam). While preparing and studying for the bar exam (and experiencing related stress from software malfunctions), I also had to deal with this additional loss and grief and was solely responsible for comforting my only child during this period of extreme loss that we are experiencing. Prior to the bar exam being rescheduled, I made plans for family to care for daughter during the testing period. After the bar exam was rescheduled, I experienced a significant amount of stress trying to develop new plans for my daughter's care. I also returned to work because I could not reasonably justify not working during the interim.

While my situation may seem unique, it is not unique among bar applicants who are persons of color. I request the Court consider the disparate impact of the coronavirus and the other significant hardships faced by many applicants of color during preparation for the bar exam. Further, I request that the Court does not further postpone licensure and consider some variation of diploma privilege as an alternative method of licensure for 2020 bar exam applicants.

Hardships and Disparate Impact of Coronavirus to Examinees of Color in 2020

Black applicants and other applicants of color are placed at a significant disadvantage taking the bar exam during the coronavirus pandemic. These applicants that are at greater risk of being impacted by COVID-19 are the same that applicants that are now facing a greater risk of failing the bar exam due to "lack of access to money for basic necessities, access to technology and study spaces, and access to child care."² Additionally, many Black applicants have described the "intense personal stress" of studying

¹ As I am sure the justices are aware, Boyd School of Law is the only law school in the state of Nevada. List accomplishments. It is assumed that graduates of this school would at least be minimally competent in Nevada after graduation.

² Lauren Hutton-Work & Ray Guyse, *Requiring a Bar Exam in 2020 Perpetuates Systemic Inequities in the Legal System*, THEAPPEAL.ORG (Jul. 06, 2020), <https://theappeal.org/2020-bar-exam-coronavirus-inequities-legal-system/>

for the bar exam during the unrest in this nation regarding racial injustice.³ Even under previous testing conditions, “Black students are more often burdened by higher student loan debt, primary caregiver responsibilities, more of a need to work while they study for the exam, and other unique socio-cultural challenges that are significantly less pervasive among white students.”⁴ To require a delayed in-person exam or remote exam under these conditions would greatly disadvantage applicants of color.⁵

Dean Mike Barry of South Texas College of Law indicates that this year we are not testing minimal competency, rather examiners are testing who has access to wealth and resources because the coronavirus pandemic has made it nearly impossible for applicants to study under normal testing conditions if they do not have access to wealth.⁶ We know that due to structural inequalities, Black applicants and other applicants of color have less access to wealth, placing them at a disadvantage this year. Dean Annette Clark of Seattle University School of Law cautioned the Washington Supreme Court that “[t]he burdens of the coronavirus pandemic and the racial unrest we are experiencing are being disproportionately borne by our graduates of color as they struggle to prepare for the bar exam.”⁷ This Court has a duty to ensure to that all applicants have a fair bite at the apple. I am not convinced that it is possible to administer a bar exam fairly for all applicants given the current state of 2020.

The Court Should Adopt of a Variation of Diploma Privilege

New attorneys are essential and the Court should adopt new methods for licensure for the 2020 bar exam. While I understand that after careful considerations the Court determined that a remote bar exam was the most effective way to determine minimum competency of Nevada law, I urge the Court to look at alternative paths to licensure for the 2020 bar exam because a remote exam is no longer practicable or a reliable indicator of minimum competency. As 2020 continues to teach us all, we do not have to keep doing the things the same way over and over simply because that is how we have always done them. As courts are adopting new ways of conducting business so that essential functions continue, so must Nevada adopt new ways to license attorneys for this year because the old ways of testing are neither practical nor reliable at this time. Our neighboring states of Oregon, Washington, and Utah have adopted alternative methods of licensure for 2020 bar exam applicants.

I understand there may be reservations about simply “giving” licensure to applicants because they have completed law school. Diploma privilege may have been viewed as a laughable idea to some in the past. However, the times that we now face are no joke and the lives of the applicants and the integrity of the profession depends on alternative methods of licensure like diploma privilege. The Supreme of Utah waived the bar exam for “Qualified Candidates” that graduated from accredited law schools with a bar passage rate of 86 percent or more that are able to complete 360 hours of supervised

³ *Id.* “Black students noted that, because COVID-19 coincided with a national reckoning on race, they had been under intense personal stress.”

⁴ Sybil Rosado, *When Will Black Lives Matter to the Florida Board of Bar Examiners?*, JURIST.ORG (Jun. 30, 2020), <https://www.jurist.org/commentary/2020/06/sybil-rosado-black-lives-matter-florida-bar-exam/>

⁵ Texas Board Law Examiners, YOUTUBE (Jul. 2, 2020), <https://www.youtube.com/watch?v=RzUAM6Ht91M&feature=youtu.be&t=11733>

⁶ *Id.*

⁷ Letter from Dean Annette E. Clark, Seattle University School of Law, to the Washington Supreme Court (Jun. 10, 2020) (found online at <https://taxprof.typepad.com/files/seattle-letter.pdf>).

practice and otherwise meet the requirements to be admitted to that state's bar.⁸ Oregon granted Emergency Diploma privilege to 2020 graduates from the state's law school or from schools with bar passage rate of 86 percent or more that otherwise satisfied requirements for admission⁹

The Court should grant emergency diploma privilege to all first-time bar applicants that graduated from UNLV William S. Boyd School of Law and from accredited law schools with acceptably high bar passage rates who would otherwise satisfy requirements for admissions. If the Court is inclined to adopt a component of supervised practice, the 360 hours of supervise practice adopted by Utah also seems sufficient.

I urge the Court to reconsider diploma privilege as an alternative form of licensure. Given the disparate impact coronavirus and other world events have had on applicants of color and the documented failings of the ILG software, I believe the only reasonable alternative is to grant diploma privilege to the July/August Nevada bar applicants. Just a year ago wearing masks in courthouse seemed laughable; yet our courts have adopted such policies. We know that masks are needed to protect against coronavirus, so too is diploma privilege needed to protect against injustice and irreparable harm to applicants – both are tools the Court has at its disposal to prevent further harm.

Respectfully Submitted,

Shaneka J. Malloyd

⁸ Utah Sup. Ct. Order for Temporary Amendments to Bar Admission Procedures During COVID-19 Outbreak (Apr. 21, 2020).

⁹ Wash. Order Approving 2020 Attorney Admissions Process (Jun. 30, 2020).